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Minutes and audio recording of court hearings – precision or duplication of tasks?

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POLICY DOCUMENT

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**Rule of Law Institutional
Strengthening Program (ROLISP)**

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Abbreviations

CrC	Contravention Code
CvPC	Civil Procedure Code
CPC	Criminal Procedure Code
SCM	Superior Council of Magistracy
ICMS	Integrated Case Management System
SCM Regulation	Regulation on digital audio recording of court hearings, approved by SCM decision no. 338/13 of 12 April 2013
ROLISP	USAID Rule of Law Institutional Strengthening Program

Introduction

Court hearings in the Republic of Moldova have always been documented through drafting written minutes. The minutes are to exactly reproduce everything which happens in the court hearing.

In 2006 and 2009 the legislative framework was amended in order to allow digital audio recording of court proceedings. In 2009, the SCM adopted a Regulation on the audio recording of court hearings, which was amended in 2013. However, the provisions in Procedure Codes on the manner of keeping the minutes were not changed, which determined that detailed minutes are prepared even if there is audio recording of the hearing.

In 2009, due to external financial support, all courtrooms in the Republic of Moldova were equipped with sets of audio recording of court proceedings.¹ Because of the insufficient number of courtrooms, many court hearings were taking place in judges' offices, and were not audio recorded. During 2013–2015, the judges who did not have their own courtrooms and conducted hearings in their own offices were provided with recorders. At the moment, 153 courtrooms are provided with sets of audio recording of court proceedings, and judges conducting hearings in their offices – with recorders.

In January 2014, 58% of court hearings were audio recorded, of which 26% – through the “SRS FEMIDA” program and 32% – through recorders. In August 2015, out of the 47 monitored courts² the hearings were audio recorded at 100% in 40 courts.³ In seven courts, the ratio of audio recorded hearings was less than 100%.⁴ According to SCM, during July–August 2015, 53% of recorded hearings were recorded using recorders, and 47% – through the “SRS FEMIDA” program.⁵

The practice of detailed written registration of all arguments discussed by the parties during hearings continues even after the introduction of audio recording of court proceedings. This practice is time-consuming, duplicates audio recordings, leading to overloading judicial processes and distracting the staff from activities designed to contribute to improving the quality of justice.

¹ Legal Resources Centre from Moldova, *Transparency and efficiency of the Superior Council of Magistracy in the Republic of Moldova. 2010–2012*, Chişinău, 2013, page 73, available at <http://crjm.org/wp-content/uploads/2014/04/Transparency-and-efficiency-of-SCM.pdf>.

² It was not possible to collect and include data about the number of audio recorded hearings in Şoldăneşti court, because in August its server was out of order.

³ ROLISP, *Report on audio recording of court hearings in Moldovan courts in August 2015*.

⁴ These are Basarabasca, Cantemir, Orhei, Teleneşti, Centru mun.Chişinău, Rezina and Anenii Noi courts, with a degree of recording of 45% in Anenii Noi, up to 96% in Basarabasca.

⁵ Superior Council of Magistracy, letter no. 3177 m/i of 14 October 2015.

There is a need to streamline the process of drafting the minutes of court hearings. This challenge has been officially recognized by the Moldovan authorities. To achieve the Specific intervention area 1.2.2 of the Justice Sector Reform Strategy for the years 2011–2016, the Action Plan for implementing this Strategy, in p. 7 provides conducting the study on the opportunity of drafting minutes or transcript of the court hearing and their correlation with the audio/video recording. This document is designed to fulfil this task.

1. Domestic Law and Practice

1.1. Generalities

According to Procedure Codes, the court clerk registers the content of the hearing in minutes in which all the procedural actions in the hearing are described in detail. The minutes shall be prepared for each court hearing in first instance and court of appeal.⁶

In 2006, the Law on judicial organization, no. 514 of 6 July 1995 was amended by inserting the provision that hearings may be recorded using technical video or audio means.⁷ The rule in question did not establish an obligation, but gave discretion to judges or parties to audio and/or video recording of court hearings. This could only take place with the consent of the presiding judge and only according to the procedural law. In three years, in 2009, the CvPC, CPC and the Law on judicial organization have been amended and the rule of audio and/or video recording of court hearings was introduced, retaining however the option of not recording the hearing in case of impossibility of using technical means.⁸ In 2009, SCM adopted the Regulation on digital audio recording of court hearings,⁹ which was amended in 2013¹⁰ and which established mandatory audio recording of court proceedings in all cases when the minutes of the hearing are drawn up.

In 2009, due to financial support of the Good Governance Program funded by the “Millennium Challenge” and administered by USAID, all those 153 courtrooms of Moldovan courts were equipped with audio recording sets.¹¹ In 2013–2015, judges who did not have their own courtrooms and held hearings in their offices, were provided with audio recorders. In 2014, approximately 50% of court hearings were audio recorded with the recorder, and about 30% – through the “SRS FEMIDA”.¹² In July–August 2015, 53% of hearings were recorded using recorders, and 47% – through the “SRS FEMIDA”.¹³ It seems that the use of recorders is a transitional measure to ensure all judges with the opportunity to conduct hearings in courtrooms separated from their offices.

⁶ Art. 273 CvPC, art. 336 para. (1) CPC.

⁷ Law no. 247 of 21 July 2006.

⁸ Law no. 15 of 3 February 2009.

⁹ SCM decision no. 212/8 of 18 June 2009 on approving the Regulation on digital audio recording of court hearings.

¹⁰ SCM decision no. 338/13 of 12 April 2013 on approving the Regulation on digital audio recording of court hearings, available in Romanian at http://csm.md/files/Acte_normative/REGinregistrarea%20audio.pdf.

¹¹ Superior Council of Magistracy, USAID, *Assessment Report on the Implementation of SRS Femida in Moldovan courts of law*, Chişinău, 2011, page 3, available in Romanian at http://new.csm.md/files/Rapoarte_parteneri/Raport_privind_rezultatele_evaluarii_implementationii_sistemului_de_inregistrare_audio_a_sedintelor_de_judecata_SRS_FEMIDA_in_instantele_judec%04%83toresti.pdf.

¹² Superior Council of Magistracy, Department for Judicial Administration, *Assessment Report on the Implementation of SRS Femida and Voice Recorders in Moldovan Courts of Law*, 2014.

¹³ Superior Council of Magistracy, letter no. 3177 m/i of 14 October 2015.

The courts may deviate from the audio recording of court hearings rule through a reasoned ruling, if the use of technical means for recording the court hearing makes it impossible.¹⁴ According to a monitoring report¹⁵ in August 2015, of the 47 monitored courts,¹⁶ the hearings were audio recorded at 100% in 40 courts. In seven courts, the ratio of recorded audio hearings was less than 100%.¹⁷

At the moment of drafting the policy document, there was a draft law prepared by the Ministry of Justice and registered in the Parliament,¹⁸ which provides for amendments to CvPC, CPC and CrC. The legislative initiative proposes to remove the non-audio recording option of the hearing, audio recording becoming mandatory. The draft also proposes to introduce in the CvPC and CPC the duty of the judge to inform the participants that the hearing is being audio and/or video recorded.¹⁹

In spite of the rule that hearings are to be recorded, it does not apply to certain types of hearings. Thus, according to p. 1.4 of the SCM Regulation, the audio recording of court hearings is mandatory only in cases when minutes of the hearing is to be drawn up. Hence, in the hearings of courts of appeal that take place with the participation of parties, such as contraventions or in criminal appeals examined by courts of appeal, the minutes are not drawn up, and, therefore, the audio recording is not mandatory.

1.2. Content of Minutes

According to SCM Regulation of 2013, the court clerk drafts the summary of the minutes of the court hearing, which reflects all the events of the trial and participants who make statements.²⁰ Meanwhile, following legislative changes from 2006, art. 14 of the Law on judicial organization, no. 514 of 6 July 1995, provides that hearings shall be recorded by stenography. The clerk or specialist shall transcribe recordings and stenographs as soon as possible by indicating all statements, questions and submissions of the participants in the trial and other persons participating in the proceedings, as well as judges.

CvPC provides that in the minutes of the hearing are indicated key moments of the debates of the case or the procedural act.²¹ Meanwhile, the minutes must contain *inter alia* the orders of the presiding judge, statements, requests and explanations of the participants in the hearings and their representatives, depositions of witnesses, oral explanations of experts to the forensic report, explanations and consultations of specialists, relationships of public representatives and the content of oral arguments.²²

¹⁴ Art. 275 para. (2) CvPC and art. 336 para. (2) CPC.

¹⁵ USAID ROLISP, Report on audio recording of court hearings in Moldovan courts in August 2015.

¹⁶ It was not possible to collect and include data about the number of audio hearings in Șoldănești court, because in August its server was out of order.

¹⁷ These are Basarabasca, Cantemir, Orhei, Telenești, Centru Chișinău mun., Rezina and Anenii Noi courts, with a degree of recording of 45% in Anenii Noi, up to 96% in Basarabasca.

¹⁸ Draft no. 308 of 24 August 2015 for amending and completing some legislative acts, available in Romanian at <http://parlament.md/ProcesulLegislativ/Proiectedeactele legislative/tabid/61/LegislativId/2813/language/ro-RO/Default.aspx>.

¹⁹ Art. I p. 2 and art. II p. 1 of the draft no. 308 of 24 August 2015 for amending and completing some legislative acts.

²⁰ P. 4.4.2. of the Regulation of the SCM.

²¹ Art. 274 para. (1) CvPC.

²² Art. 274 para. (2) CvPC.

The CPC stipulates that the minutes must mandatorily contain recordings of all actions of the court in the order in which they were conducted, documents and other evidence that were examined in the court hearing, the summary of judicial debates, the reply, the summary of the last word of the defendant, and other circumstances.²³

In contravention proceedings, the court clerk must include in the minutes of the meeting *inter alia* requests, motions and conclusions of the participants in the hearing, the undertaken measures and the evidence examined during the hearing.²⁴

Apparently, the Procedure Codes suggest that the judge is not entitled to ground its findings in the judgment on facts that were not recorded in the minutes,²⁵ and the lack of complete minutes or performing a procedural act constitutes grounds for quashing the civil judgment.²⁶ These provisions suggest that the current legislation emphasis on determining the content of the minutes, regardless of the content of the audio recording of the hearing. Moreover, it seems that the superior hierarchical courts never hear the recording of hearings of lower courts. This could be largely due to the fact that most of the minutes do not mention the time a certain procedural act has started, and this makes more difficult the hearing of the audio recording.

1.3. Drafting Minutes and Statements

CvPC provides that the minutes must be drafted within at most 5 days from the date of finalizing the court hearing²⁷ and must be signed by the presiding judge and the court clerk.²⁸ Within 5 working days from the date of signing that is expressly fixed in the minutes, the court must inform in writing the participants in the hearing and their representatives about the drafting and signing of the minutes and provide them with the opportunity to get acquainted with the minutes of the court hearing and receive copies of it.²⁹ Participants to the proceedings and their representatives have the right to submit written comments on the minutes of the court hearing within 5 days of signing it, indicating inaccuracies and the reasons for which they consider it incomplete.³⁰ Within 5 days from the submission of comments, the judge who signed the minutes either accepts or gives a reasoned ruling for total or partial rejection. In all cases, the comments on the minutes are attached to the file.³¹ In the civil procedure hearings, witness statements must be signed on each page and at their end by the presiding judge, the clerk and the witness after the latter gets acquainted with them. The same procedure should be followed in case of any filling or amendment in depositions.³² Usually, the testimonies of witnesses in civil proceedings shall be prepared separately from the minutes, are attached to the minutes and are part of it.

²³ Art. 336 para. (3) CPC.

²⁴ Art. 459 para. (2) CrC.

²⁵ Art. 416 para. 6 CPC.

²⁶ Art. 388 para. 1 let. g) and h) and art. 432 CPC.

²⁷ Art. 275 para. (4) CvPC.

²⁸ Art. 275 para. (5) CvPC.

²⁹ Art. 275 para. (5¹) CvPC.

³⁰ Art. 275 para. (6) CvPC.

³¹ Art. 276 CvPC.

³² Art. 220 CvPC.

In criminal proceedings, the minutes shall be prepared by the court clerk within 48 hours after the closure of the court hearing and signed by the presiding judge and the clerk.³³ Similarly to the civil proceedings, the presiding judge must inform the participants to the hearing about the drawing up and signing of the minutes within 5 working days from the date of signature and provides them the opportunity to take notice of the minutes of the hearing and receive copies of it.³⁴ Participants have 3 days to raise objections on the minutes indicating inaccuracies and the reasons for which they consider it incomplete.³⁵ The presiding judge may accept objections by a resolution on the text of the objections, and in case of rejection – by reasoned ruling, which is attached to the minutes.³⁶ The clerk shall register the statements of the parties (defendant, injured party, civil party, civilly liable party) and witnesses in the court hearing in writing as separate documents that are attached to the minutes. The statement must be signed by the person who made it, the presiding judge and court clerk and interpreter, if he/she participated. Completions or clarifications in the statement shall be registered and signed in the same conditions.³⁷

In contravention procedure, the parties and the witnesses read and sign their depositions.³⁸ The minutes shall be drawn up within 24 hours after the closure of the court hearing and shall be signed by the presiding judge and the clerk.³⁹

The general rule, both in civil and criminal procedure, is that the minutes shall be typed. This is possible when the hearing takes place in the courtroom provided with audio recording equipment, including computer. If the hearing takes place in the judge's office, where there is no computer for the clerk, the minutes are drafted by hand. CvPC and CPC provide that it should be later typed on the computer.⁴⁰

Both the SCM Regulation, CvPC and CPC provide that, after the closure of the court hearing, clerks can use audio recordings of court hearings to verify the accuracy and completeness of the minutes.⁴¹

Although this does not follow from the legislation, in practice, courts often refuse to provide parties with the copies of the minutes of the hearings because these are “documents for internal use”. As it is noted below, this practice does not exist in advanced democracies. Moreover, in Germany and in the US federal system, third parties, not only the parties in the proceedings can obtain minutes.

1.4. Audio Recording and Other Technical Options

According to SCM Regulation, CvPC and CPC, digital audio recording of court hearings is used *inter alia* to verify the accuracy and to ensure the wholeness of the minutes of court

³³ Art. 336 para. (4) CPC.

³⁴ Art. 336 para. (5) CPC.

³⁵ Art. 336 para. (6) CPC.

³⁶ Art. 336 para. (7) CPC.

³⁷ Art. 337 CPC.

³⁸ Art. 459 para. (3) CrC.

³⁹ Art. 459 para. (4) CrC.

⁴⁰ Art. 275 para. (1) CvPC and art. 336 para. (1) CPC.

⁴¹ Art. 275 para. (4) CPCv, art. 336 para. (4) CPC and p. 4.7.1. of the SCM Regulation.

hearings.⁴² After the closure of the hearing, the clerk uses audio recordings to verify the accuracy of the minutes.⁴³

Audio recording of court proceedings is carried out either through audio recording sets connected to the “SRS FEMIDA” program when the hearing takes place in a courtroom or through recorders when the hearing is held in the judge’s office.

The “SRS FEMIDA” program contains integrated models of minutes for court hearings held in civil, criminal and contravention cases. The clerk can modify these models if necessary. The “SRS FEMIDA” program allows the clerk to indicate in a simplified manner (by accessing existing options in the template of the minutes) the stages of the trial and the respective time sequences. By default, the program assigns the hour and minute of each stage of the proceedings indicated by the clerk. The program also lets one save in the system the minutes of the statements of witnesses, experts and other participants in the proceedings.⁴⁴ In practice, most clerks do not use template minutes integrated in the “SRS FEMIDA”. They separately draw up minutes in the computer in “Word” program. Also, in most cases clerks only register the starting and ending of the audio recording without indicating time sequences during which different procedural actions take place, because they do not have the time to simultaneously draft the minutes in “Word” and indicate sequences in audio recording in “SRS FEMIDA”.

Audio recordings of hearings created with the recorder neither allow for automatic indication of the stages of the proceedings and sequences of time, nor the drawing up of the minutes in a predetermined template. The minutes are usually drafted on paper, and then typed at the computer.

The SCM Regulation does not oblige the clerks to record the time sequences of the hearing when they are audio recording the hearing through the “SRS FEMIDA” program. Instead, the SCM requires clerks to indicate in the minutes of the hearing the date, hour and minute of starting and stopping the recording for each recorded sequence and the duration in hours and minutes of the sequence when performing audio recording with the recorder.⁴⁵ We do not have data to confirm whether this rule is complied with in practice.

The electronic version of the minutes prepared by the clerk through the “SRS FEMIDA” program or “Word” is saved in the electronic file in ICMS.⁴⁶

When using “SRS FEMIDA”, the audio recording is saved directly on the server of the court. When using the recorder, the audio recording is transferred by the clerk from the recorder to the computer and then on the server of the court.⁴⁷ All audio recordings are stored on courts’ local servers⁴⁸ and the CD/DVD, which are attached to the case file. The audio recording must be kept on the court server for one year from the actual enforcement of the judgment on the respective case file.⁴⁹

⁴² P. 1.2. of the SCM Regulation, art. 275 para. (2) CvPC and art. 336 para. (2) CPC.

⁴³ Art. 275 para. (4) CvPC and art. 336 para. (4) CPC.

⁴⁴ Information provided by ROLISP on 7 September 2015.

⁴⁵ P. 4.6.4. of the SCM Regulation.

⁴⁶ Information provided by ROLISP on 7 September 2015.

⁴⁷ P. 4.7.2. of the SCM Regulation.

⁴⁸ USAID, *Guidelines for Effective Court Administration*, Chişinău, 2014, page 55, available at http://rolisp.org/images/publications/ghid_gestionarea_judecata_en_res.pdf.

⁴⁹ P. 6.2.3. of the SCM Regulation.

Participants in the proceedings are entitled to receive copies of the audio recordings of the hearing. They are issued by the clerk following a written or verbal request of the participant in the hearing or his/her representative, upon a payment established by the Government.⁵⁰

The audio recording copied on the CD/DVD or any other device contains the audio file and time sequences of the proceedings, if the clerk has indicated them during or after audio recording. The stages of the proceedings can be viewed in the “SRS FEMIDA” and any other computer that has a CD/DVD ROM.⁵¹

2. Law and Practice of Other States

In the context of this research the manner of drawing up the minutes and recordings of court hearings in France, Germany, England and the federal system in the United States have been examined. The information was obtained from a law firm with offices in those states, as of 2011. The manner of audio/video recording of hearings, the content of the minutes of the hearing and the access to minutes and records has been analysed. Details in this respect are presented in the following table:

	France	Germany	England	USA (federal system)
Possibility of audio recording in the first instance court	It is not done. The court president can allow the recording of criminal hearings for justice archives. Constitutional Court hearings are videotaped and are available on-line.	The recording is carried out on the recorder. The audio recording is deleted after the parties agree on the content of the minutes or after the judgment becomes final.	Usually, the audio recording takes place in the first instance (only in civil cases) and second instance court, but the judge can decide not to do so. The hearings are audio recorded in the Court of Appeal. The hearings of the SCJ are videotaped and placed online.	The recording of the hearings is done at the discretion of each court. In practice, in the majority of circuit courts audio recording takes place. Some courts have even given up stenography. In all courts of appeal and the Supreme Court hearings are audio recorded.
The obligation of drawing up the minutes of the hearing	Drawing up is mandatory in civil cases (few in numbers) and in criminal cases in first instance courts. When examining criminal cases in appeal or recourse the court has the discretion to draw up the minutes.	Mandatory for any type of hearing.	No minutes, but the transcript of the hearing. Parties and the public, with the consent of the judge, can get a partial transcript of the hearing or of the entire hearing.	No minutes of the hearing and documentation can be held by hand, by capturing the sound, etc., under the rules of the court. At the request of the court or the parties, a transcript can be drawn up.
Who drafts the minutes?	The staff of the court.	In civil cases there is no clerk, and the minutes are drawn up by the judge. In criminal cases they are drawn up by the clerk.	Specialized companies, in exchange of a fee, carry out transcription.	The special staff of the court (court recorder) carries out the documenting of the hearings. The same staff carries out transcription. The party requesting the transcript pays for it.

⁵⁰ Art. 276¹ para. (2) CvPC and art. 336 para. (8) CPC.

⁵¹ Information provided by ROLISP Program on 7 September 2015.

	France	Germany	England	USA (federal system)
Content of the minutes of the hearing	Present the statements of the participants and the procedure. However, in most cases the parties shall submit their arguments in writing.	Describe especially the procedure and summary of the statements of the participants in the form agreed by the parties. They are short. The parties present their arguments in writing.	-	Any verbal communications are recorded, including the examination of jurors, the judge's talks behind closed doors with the representatives of the parties, presentation of evidence, oral presentations, etc. The judge may request the transcription of what happened in the meeting.
Probative strength of the minutes	The minutes can be relied upon to confirm certain facts, but their provisions are not decisive.	The minutes have a low procedural importance, because in most cases, the parties submit their position in writing.	The transcript has no probative strength.	Transcription is important, but can be corrected after the confrontation with audio recording.
Access to the minutes of the hearing	Parties can always get a copy of the minutes and third parties can get a copy after the closure of the proceedings.	Parties and other interested persons have access to the minutes.	Parties may obtain a copy of the transcript of the hearing or part of it upon paying a fee. The judge may provide third parties access to the transcript of the hearing.	Most courts of appeal and the Supreme Court of Justice posts the audio recording online. Third parties have free access to already made transcripts, but the judge can restrict access to protect the "fundamental rights". Before providing access to third parties, personal information is removed.

Analysis of the practice of the four legal systems allows us to draw the following conclusions:

- a. The practice of drawing up minutes varies from state to state;
- b. Due to implementation of advanced technical solutions in order to streamline the courts and for the purpose of saving resources, it has been noticed the tendency to reduce the volume or even give up the minutes of the hearing in favour of audio recording;
- c. In systems where the hearings are audio recorded all cases of a certain type (civil or criminal) are recorded, and the law does not establish general limitations in this regard;
- d. Audio recording of hearings is carried out especially in the hierarchical superior courts and some Supreme Courts post these records on the website;
- e. When audio recording is made, the minutes is drawn up based on the audio recording and in case of dispute, the minutes is confronted with the audio recording;

- f. Transcription of the hearings is usually carried out by special court staff. This staff is not attached to the judge, but to the courtroom;
- g. In case the minutes of the hearing is drawn up, the parties have unlimited access to the minutes. Third parties have access to the minutes after the closure of the proceedings or before the decision of the judge, but may be required to pay for it.

3. Optimization of Minutes

Drawing up detailed minutes was particularly important for the courts in the past because this was the only way to record what happens during the hearing, especially since there were no audio records to confirm the truthfulness of what was indicated in the minutes. Audio recordings of the hearings increase the participants' access to information on events of the hearing, provide a guarantee of the authenticity of that information and allow for a more efficient use of administrative resources of the court.

Currently, in the Republic of Moldova, the minutes of court hearings represent a faithful transcription of almost all stages of the trial. Although the Law on judicial organization, in art. 14 states that audio recordings should be transformed in stenographs, courts do not draw up stenographs of what has been said during the hearing. Besides reviewing the main stages of the hearing, the minutes also reflects the arguments presented orally by parties, although usually they are attached in written to the case file and audio recorded. Both the SCM Regulation and the Procedure Codes require clerks to use audio recordings to ensure the accuracy and plenitude of the minutes. For this reason, in the Republic of Moldova, audio recordings turned only into a tool for clerks to ensure the wholeness of the minutes. Moreover, given the principle of ensuring the plenitude of the minutes set in the legislation, the parties have the right to demand observance of this principle when they get acquainted with the minutes and may object to the reasons why they consider it incomplete, and clerks are required to comply with it.

However, when there are several possibilities for fixing the stages of the court hearing, the proceedings can be optimized to avoid wasting of human resources. Audio recordings and the minutes of the hearing do not complete each other in practice, but overlap – through a complete audio recording and a very detailed minutes. Although audio recordings provide accurate information on the hearing, minutes have traditionally been and continue to be used as a source of information regarding the arguments of the parties in the proceedings.

Drawing up detailed minutes requires allocation of extremely high administrative resources by the court. The capacity of clerks to draw up the minutes may be hampered by the number of minutes, high staff fluctuation in the system and other workloads in court. The clerk prepares very many detailed minutes in cases which are not appealed in higher courts. For example, in 2014, 11%⁵² of civil cases have been appealed in superior courts and about 28% of criminal cases.⁵³ In 89% of civil and 72% of criminal cases the enormous work of clerks for preparing detailed minutes is of no use.

The process of drawing up minutes can be streamlined, especially given that the law will provide the obligation to audio record.⁵⁴ The experience of other countries that have reduced

⁵² Superior Council of Magistracy, 2014 *Activity Report of the Superior Council of Magistracy and on organizing and functioning of courts in the Republic of Moldova*, page 101, available in Romanian at http://csm.md/files/Raport_anual/RAPORT_CSM2015.pdf.

⁵³ Idem, page 102.

⁵⁴ As stipulated in art. I p. 2 and art. II p. 1 of the draft no. 308 of 24 August 2015 for amending and completing some legislative acts.

the content of the minutes, including witness statements, may be taken over. For example, in Germany, the witness statements are recorded as a summary proposed by the judge, agreed upon by both parties. In the USA, the minutes contain a brief description of the stages of the proceedings, without a faithful transcription of the debate.

Perhaps the biggest challenge when drafting a shortened form of minutes would be felt by the hierarchical superior court judges, when examining the observance of the procedure, presentation of evidence and arguments of the parties. If we compare the number of cases examined by the first instance court to the enormous administrative efforts to ensure detailed minutes for cases that subsequently are not challenged, it seems more rationally to optimize the process of drawing up minutes for all first instance court cases. In cases that reach the appeal and recourse courts, judges may be provided with additional assistance in transcribing the necessary parts of the hearing, according to the US model, where the appeal court judge may request a partial transcript of the hearing.

From the technical point of view, in order to decide which parts of the audio recording need to be transcribed, it is necessary that those parts or time sequences to be indicated by clerks at the time of audio recording of the hearing in the “SRS FEMIDA” program. Unfortunately, the practice of clerks in Moldova is to record only the beginning and the end of the hearing, due to lack of time to draw up at the same time the minutes and to ensure proper audio recording of the hearing. From the interviews organized for the purpose of this analysis, it was noticed that clerks do not use the template of the minutes integrated in the “SRS FEMIDA”, but draw it up separately in “Word” format. The template of the minutes of “SRS FEMIDA” is much more convenient because it already contains all stages of the minutes and much more information which can be automatically inserted in the minutes. The stages of the integrated minutes in “SRS FEMIDA” can be modified if necessary by the clerk. Its convenience lies in the fact that it is converted into “Word” after completion and is directly saved in the electronic file.

Also, the use of summary minutes would encourage parties and their representatives to present information in writing, in a format accessible to the judge. This would encourage all judges to audio record the hearings.

Finally, giving up a detailed minutes will lead to the successful implementation of the state policy of computerization of the minutes and gradual going paperless.

Recommendations

1. Drop out detailed minutes. The minutes of the hearing might contain only key aspects of the hearing, without reproducing the exact content of the debates. In case of statements of the parties, including witnesses, they could be summarized by the judge immediately in the hearing and this summary should be agreed upon by all parties, according to the model applied in Germany;
2. In case of inconsistencies between the minutes and audio recording, the minutes shall be adjusted to the audio recording. In any case, it should not constitute grounds for quashing the judgment or sending it back for reexamination;
3. In order to facilitate the audition of the audio recording of the hearing by the hierarchical superior court or third parties, clerks should indicate in the audio file and the minutes time sequences for each action or procedural event;
4. Audio recording and drawing up the minutes, as recommended above, to be carried out in all cases in which there is a hearing with the participation of parties, including the Court of Appeals;
5. Giving up the practice of refusal to issue copies of the minutes. If they contain personal data, such data may be excluded or anonymized;
6. It is recommended to unify the manner of keeping the minutes in all kinds of procedures. Therefore, amending the Procedural Codes is needed.

The Legal Resources Centre from Moldova is a not-for profit non-governmental organization based in Chişinău, Republic of Moldova. LRCM strives to ensure a qualitative, prompt and transparent delivery of justice and effective observance of civil and political rights in Moldova. In achieving these aims, LRCM combines policy research and advocacy in an independent and non-partisan manner.

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